FREDERICK L. SMITH

IBLA 83-647 Decided January 25, 1984

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting acquired lands oil and gas lease offer NM-A55219 (TX).

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Consent of Agency -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Consent of Agency

The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over acquired land described in an oil and gas lease offer be obtained prior to the issuance of a lease for such land. Absent such consent, the Department of the Interior is without authority to issue a lease.

APPEARANCES: James S. Holmberg, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Frederick L. Smith appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated April 13, 1983, rejecting oil and gas lease offer NM-A55219 (TX). BLM gives this reason for the rejection:

> The Agricultural Research Service has reported that any development of mineral deposits will interfere with the primary purpose for which the land was acquired. It has been determined that the presence of oil and gas production in the vicinity would modify the natural climate downwind and would destroy essentially the entire property for detailed field research. Such interruption would set the research program back a minimum of five years. The Big Springs area is not large enough to allow room for a buffer zone between the research and any offsite drilling activity. Any physical structure there would interfere with the natural flow of the winds, and wind erosion is the main research being conducted.

On appeal appellant states that the subject lease offer covers a tract of land in Howard County, Texas, which is under the jurisdiction of the Agricultural Research Service, Department of Agriculture. Appellant asserts the decision did not reveal the name of the person in the Department of Agriculture (Agriculture) who withheld consent to appellant's proposed lease, and that appellant was not advised as to whether his willingness to accept a nondevelopment lease was communicated to the Agricultural Research Service. Appellant also states the record does not show that any independent determination was made by BLM or by Agriculture as to whether and under what conditions a lease might issue in the public interest consistent with multiple use values. Appellant asserts that any decision to reject his offer must be made by the "head" of the executive department having jurisdiction over the land. Appellant points out that "parcel 61" was offered in the April 1983 competitive oil and gas lease sale "Subject to Agricultural Research Service Special Stipulations, No Surface Occupancy." Finally, appellant asked that his offer be considered by the head of the Agricultural Research Service, and that the case be set aside and remanded to BLM for further action.

The record shows that appellant on December 29, 1982, filed the subject noncompetitive lease offer for acquired lands (130 acres). He sent an accompanying letter, dated December 25, 1982, and received by BLM on December 29, 1982, stating he was aware of the special use by Agriculture of the land he sought and that he was willing to accept a lease with these special stipulations:

> 1. Lessee will not drill on the subject land or permit it to be drilled upon.
>
> 2. Lessee will not conduct or permit seismic, explosive or damaging surveys on the subject land.
>
> 3. Any development of the sub-surface of the subject land will be allowed only by directional drilling from outside the subject land, and no such development shall be allowed by the penetration of any drilling instrument above the depth of 2,000 feet below the subject land.

Thereafter, on March 8, 1983, BLM filed a "Title Report Request" with the Department of Agriculture, Agricultural Research Service, which stated:

> Enclosed is the seventh copy of the offer with attachments. Please return with your report.
>
> Please furnish this office with verification of mineral interests held by the United States and inform us if you consent to the leasing of acquired minerals determined to be owned by the United States. If you consent, provide us with the stipulations necessary to insure adequate utilization of the lands for which they were acquired and any surface protection stipulations. If you deny consent to leasing your reasonings should be provided.

On April 4, 1983, BLM received this answer dated March 29, 1983, from the Agricultural Research Service and signed by David Fuller, realty specialist.

> RE: Title Report Request NM-A 55219 (TX), 3111B (943C-2e)
>
> It has been determined by this office that any development of deposits (mineral, oil, or gas) will interfere with the primary purpose for which the land was acquired.
>
> The applicant states in his letter dated December 25, 1982, that he is aware of the sensitive nature of our research and agrees not to drill on the subject property. We considered this, but the problem is that the presence of oil and gas production in the vicinity would modify the natural climate downwind and would destroy essentially the entire property for detailed field research. Such interruption would set our research program back a minimum of five years (a considerable investment of this agency's funds, time and effort).
>
> The applicant also lists several oil and gas leases including one covering our own research station in Bushland, Texas that contains certain protective stipulations, which he feels sets a precedent for granting such a lease in this case. But, our findings show that the circumstances concerning the physical requirements at this location compared to those at Bushland are entirely different. Our station at Bushland consists of over 1500 acres, thus, we have ample room for a buffer zone between the research and any off-site drilling activity. Such is not the case at Big Spring. Any physical structure there would interfere with the natural flow of the winds, and wind erosion is the main research being conducted.
>
> We regret that we cannot be more responsive to the needs of the applicant, but, after a thorough evaluation of our research operations at Big Spring, we feel that it would not be in the best interests of agricultural research or the general public to approve any application for oil and gas development at this time.

[1] The contentions on appeal are largely answered by this letter, which is part of the case record. 1/ Thus, the name of the party who acted for Agriculture is given, David Fuller. Also, as Fuller specifically refers to appellant's December 25, 1982, letter, Fuller was aware of appellant's willingness to accept a nondevelopment lease and to accept certain special stipulations. Further, the letter from Fuller makes clear the reasons for

1/ It is possible that this appeal may have been avoided if BLM had included a copy of this letter with its April 13, 1983, decision. At a minimum it would have narrowed appellant's concerns on appeal.

rejecting the proposed lease even with stipulations and explains in detail why consent for this lease cannot be granted and why other leases have been granted with stipulations covering a research station in Bushland, Texas.

Section 3 of the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 352 (1976), states in pertinent part:

> No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit * * * and subject to such conditions as that official may prescribe to insure adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered.

The effect of this statute is to preclude mineral leasing on acquired lands of the United States without the consent of the administrative agency having jurisdiction over the acquired land. Amoco Production Co., 69 IBLA 279 (1982); Altex Oil Corp., 66 IBLA 307 (1982); Dennis Harris, 55 IBLA 280 (1981). Thus, since Agriculture has withheld its consent, the Department of the Interior cannot issue an oil and gas lease for the land, and the lease offer was properly rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge